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NATIONAL RAILROAD PASSENGER  
CORPORATION dba AMTRAK and JOE DEELY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN EARL CAMPBELL,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION dba AMTRAK, JOE DEELY,  
and DOES 1-15, inclusive,

Defendants.

Case No. C05-05434 MJJ (EDL)

**REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF DEFENDANT  
NATIONAL RAILROAD PASSENGER  
CORPORATION'S REQUEST FOR  
LEAVE TO FILE MOTION FOR  
RECONSIDERATION OF ORDER RE  
MOTIONS TO COMPEL**

[CONCURRENTLY FILED HERewith:  
REQUEST FOR LEAVE TO FILE  
MOTION FOR RECONSIDERATION RE  
MOTIONS TO COMPEL;  
DECLARATION OF CARA CHING-  
SENAHA; PROPOSED ORDER  
INCLUDING BRIEFING SCHEDULE]

Complaint Filed: 12/30/05  
FAC Filed: 2/23/06  
Trial: 7/23/2007

Hearing Date: May 1, 2007  
Hearing Time: 9:00 a.m.  
Dept.: Courtroom E, 15<sup>th</sup> Floor  
Magistrate Judge Elizabeth D. Laporte

[L.R. 7-9(a), (b)]

1 TO PLAINTIFF JOHN EARL CAMPBELL AND HIS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Defendant National Railroad Passenger Corporation (aka  
3 Amtrak) by and through its attorneys, hereby request the Court to take judicial notice pursuant to  
4 Federal Rule of Evidence 201 of the following documents in support of their Request for Leave to  
5 File Motion for Reconsideration of the court's May 1, 2007 discovery order:

6 A. "*Order Re Discovery Disputes*," in *Howard v. National Railroad Passenger*  
7 *Corporation*, United States District Court, District of Northern California, Case C05-  
8 04069 SI, at 3:12-18.

9  
10 Respectfully submitted,

11  
12 Date: May 31, 2007

JACKSON LEWIS LLP

13  
14 By: /s/

Kathleen Maylin  
Cara Ching-Senaha  
Attorneys for Defendants  
NATIONAL RAILROAD PASSENGER  
CORPORATION dba AMTRAK and  
JOE DEELY

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20 H:\N\National Railroad Passenger Corp (40707)\Campbell (89560)\Pleadings\Motion for Reconsideration\request for judicial notice  
21 CMC 053107.doc  
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**EXHIBIT A**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MOYSE HOWARD,

No. C 05-4069 SI

Plaintiff,

**ORDER RE: DISCOVERY DISPUTES**

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION, et al.,

Defendants.

**I. Plaintiff's motion to compel documents regarding individual defendants' financial condition (Docket Nos. 62 and 70)**

Plaintiff moves to compel the production of documents relating to the individual defendants' financial condition. Plaintiff contends that this discovery is relevant to the punitive damages claims against these defendants. Defendants oppose the motion, arguing, *inter alia*, that as a matter of law individual defendants cannot be held liable for any damages under either Title VII or 42 U.S.C. § 1981.<sup>1</sup>

Defendants are correct that the individual defendants may not be held personally liable under Title VII. *See Miller v. Maxwell's Int'l Inc.*, 991 F.2d 583, 587 (9th Cir. 1993). However, although the Ninth Circuit has not addressed the issue of whether individual defendants may be liable under 42 U.S.C. § 1981, other circuits have allowed such claims. *See, e.g., Whidbee v. Ghazarelli Food Specialties, Inc.*, 223 F.3d 62, 75 (2d Cir. 2000); *Al-Khazraji v. St. Francis College*, 784 F.2d 505, 518 (3d Cir. 1986), *aff'd on other grounds*, 481 U.S. 604 (1987); *Tillman v. Wheaton-Haven Recreation Ass'n*, 517 F.2d 1141, 1146 (4th Cir. 1975). Neither party addresses this authority.

<sup>1</sup> The individual defendants are named as defendants on plaintiff's § 1981 claim, but not on plaintiff's Title VII claim.

1 Because the parties have not fully briefed the issue, the Court does not at this time decide  
2 whether punitive damages are available against the individual defendants in this action. However, the  
3 Court will permit plaintiff's discovery relevant to this damages claim. Accordingly, the Court GRANTS  
4 plaintiff's motion to compel documents regarding the individual defendants' financial condition. Such  
5 discovery may be produced pursuant to a protective order.

6  
7 **II. Plaintiff's motion to compel depositions** (Docket Nos. 63 and 69)

8 Plaintiff seeks to compel the depositions of two individual defendants and two percipient  
9 witnesses. Plaintiff states that at a recent deposition, counsel agreed on the record that plaintiff could  
10 take these depositions past the discovery cutoff, but that now defendants are refusing to abide by that  
11 agreement. Defendants, in contrast, state that they only agreed that plaintiff could take the individual  
12 defendants' depositions up to one week past the February 15, 2007 discovery cut-off – which plaintiff  
13 failed to do – and that they never agreed to allow depositions of percipient witnesses past the cut-off.

14 Inexplicably, neither party has provided the Court with an excerpt of the deposition transcript  
15 documenting the parties' agreement. Without a copy of that agreement, the Court is unable to determine  
16 whose version of events is correct. Accordingly, the Court DENIES plaintiff's motion to compel  
17 without prejudice to renewal. If plaintiff renews this motion, plaintiff shall submit a copy of the  
18 deposition excerpt documenting the parties' agreement.

19  
20 **III. Plaintiff's motion to compel documents and answers to interrogatories** (Docket Nos. 61 and  
21 68)<sup>2</sup>

22 Plaintiff moves to compel the following categories of documents: (1) employment records of the  
23 individual named defendants Deely, Hall and Shelton; non-party employees who allegedly complained  
24 about plaintiff; and "similarly-situated" employees (Document Requests 1-8); (2) statistical information  
25 regarding the employment of African-Americans in management positions (Requests 33-34); (3) EEO  
26 complaints and investigations involving race discrimination against Amtrak in the Pacific Division, and

27  
28 <sup>2</sup> Neither party provided the Court with a copy of the document requests and interrogatories at  
issue, and thus this order relies on the parties' description of the discovery.

1 against named defendants Deely, Hall and Shelton (Requests 35-37, 48 and 53); and (4) Amtrak's  
2 documentation of plaintiff's protected activities (Requests 27, 44 and 47).

3 Plaintiff moves to compel further responses to interrogatories requesting the following  
4 information: (1) the identity of African-Americans who reported to the individual defendants Deely,  
5 Hall and Shelton (Interrogatory Nos. 2, 3 and 4); (2) Amtrak's documentation of plaintiff's protected  
6 activities (No. 8); (3) other similarly-situated managers terminated by Amtrak (Nos. 15-16); (4) the  
7 numbers of African-Americans hired and fired in the Pacific Division (Nos. 17-20); (5) the identity of  
8 persons suing Amtrak for racial discrimination (No. 21); and (6) the basis for defendant's denial of  
9 plaintiff's request for admissions (Nos. 22-25).

10 Defendant opposes this discovery on numerous grounds. First, defendant complains that plaintiff  
11 delayed in moving to compel until just before the deadline for such motions. Although the Court is  
12 sympathetic to defendants' concerns, the fact remains that plaintiff's motion is timely. However, certain  
13 of the document requests and interrogatories seek statistical information that would be appropriate only  
14 for expert analysis; the deadline for expert disclosures has passed, and the deadline for filing dispositive  
15 motions is imminent. Accordingly, the Court finds that plaintiff has waited too long to compel  
16 statistical information regarding the employment of African-Americans in management positions  
17 (document requests 33-34), and information about the numbers of African-Americans hired and fired  
18 in the Pacific Division.

19 However, the Court finds that plaintiff is entitled to the balance of the discovery sought, with  
20 certain limitations. Defendant objects that certain of the interrogatories, such as interrogatory numbers  
21 15 and 16, are burdensome because they seek information on a nationwide basis. The Court agrees, and  
22 limits the geographic scope of the discovery to the Pacific Division. Defendants' remaining objections  
23 are not well-founded, and the Court finds that the discovery sought is relevant to plaintiff's claims of  
24 discrimination and retaliation.

25  
26 **IT IS SO ORDERED.**

27 Dated: March 13, 2007

28  
  
SUSAN ILLSTON  
United States District Judge

**Vega, Belinda (S.F.)**

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**From:** ECFHELPDESK@cand.uscourts.gov  
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**Case Name:** Howard v. National Railroad Passenger Corporation et al  
**Case Number:** 3:05-cv-4069  
**Filer:**  
**Document Number:** 76

**Docket Text:**

ORDER re: Discovery Disputes. Signed by Judge Illston on 3/13/07. (SI, COURT STAFF) (Filed on 3/13/2007)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**C:\Documents and Settings\usdc\My Documents\Adobe\05-4069.03.pdf

**Electronic document Stamp:**

[STAMP CANDStamp\_ID=977336130 [Date=3/13/2007] [FileNumber=3296705-0]  
[6dbb5ea21a870a9b6780f0a7c81a466b04e422a236210ca6559a202bb040e5c649556  
cf3311f5e861fa5eeff73d86a8d6fb59ee6a51e48befcc091df18cfb69f]]

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